

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO
EASTERN DIVISION**

UNITED STATES OF AMERICA,	:	CASE NO. 1:18CR00739
	:	
Plaintiff,	:	
	:	JUDGE BENITA Y. PEARSON
-vs-	:	
	:	
ANTHONY CLARK,	:	<u>ANTHONY CLARK’S SENTENCING</u>
	:	<u>MEMORANDUM</u>
Defendant.	:	

Anthony Clark submits this sentencing memorandum in support of his request that the Court properly calculate his guidelines range using the agreed base offense level of 22, and vary downward from that range based on the nature and circumstances of the offense and Clark’s history and characteristics, particularly his conduct while released on bond.

I. Background

Anthony Clark is 37 years old. He lives with his wife, and he works full time for Service Masters as a cleaning tech. PSR ¶¶ 55, 59-60, 68.

On August 21, 2018, police approached a vehicle stopped in the middle of the road with several people standing around it. After it drove off, the police approached Clark and two other men sitting on plastic crates across the street. When the police asked if they were armed, Clark immediately told them that he was. They found a pistol in his waistband and a small plastic bag of marijuana in his hand, and arrested him. In his nearby car, which was playing music with the windows down, they found a magazine, 14 grams of marijuana, and drug paraphernalia. PSR ¶¶ 13-19.

A grand jury indicted Clark on one count of possessing a firearm after a felony and one count of possessing marijuana. He has pleaded guilty to Count 1 and the government has agreed to dismiss Count 2. He regrets having the gun and accepts responsibility for his actions. PSR ¶¶ 3-5, 10, 23.

After Clark was indicted, the Court released him on bond. After he pleaded guilty, the Court continued his bond pending sentencing with the added condition of home detention and location monitoring. While on bond, Mr. Clark obtained his job with Service Masters, after previously working seasonally as a landscaper and snow remover. He has worked full time for Service Masters since March. And he has complied with all conditions of his release. PSR ¶¶ 11, 68.

In April, Clark's wife was in a car accident. She had a stroke and cerebral hemorrhage. She spent eight days in the hospital. Since her release, she has required physical therapy and 24-hour supervision, and Clark has spent his non-work time caring for her. PSR ¶ 59. Her medical records were previously submitted as Exhibit B to Clark's motion to modify his conditions of release.

II. Law & Analysis

A. Sentencing Guidelines

In Clark's plea agreement, the parties agreed that his proper base offense level is 22, with no enhancements. The PSR includes a four-level enhancement for possessing a firearm in connection with another felony offense, but the agreed lower range more accurately reflects Clark's offense conduct. Clark possessed 14 grams of marijuana. This includes marijuana found on his person and in the car. Possessing even much larger quantities of marijuana—anything up to 100 grams—is a minor misdemeanor under Ohio law. *See* OHIO REV. CODE 2925.11(c)(3)(A).

And selling an amount even larger than that—anything up to 200 grams—still isn't a felony, because it is not an offense punishable by a term exceeding one year. *See* OHIO REV. CODE 2925.03(c)(3)(A). Given the small quantity of drugs involved, the parties' agreement provides the proper offense level.

Using the agreed base offense level of 22, reduced to 20 after a two-point reduction for acceptance of responsibility and combined with Clark's criminal history category of IV, the proper advisory guidelines range of 51 to 63 months in prison.

B. Variance

A downward variance from the 51- to 63-month range is appropriate. Approximately three in ten felon-in-possession offenders receive a sentence below the advisory guidelines range, and the average reduction is 34.2% from the low end of the range. *See* U.S. Sentencing Commission, *Quick Facts, Felon in Possession of a Firearm*, at 2, https://www.ussc.gov/sites/default/files/pdf/research-and-publications/quick-facts/Felon_In_Possession_FY18.pdf. Clark is one of the approximately 30% that should receive a downward variance. First, his prior offenses are not as severe as is typical for criminal history category IV. He has one two-point offense and three one-point offenses, and his prior custodial sentences were ten months, six months, and three days. PSR ¶¶ 38-45. Second, he complied with police requests and admitted his conduct immediately upon being asked. Third, he has worked, cared for his wife, and complied with all conditions of his release while on bond. He has demonstrated that a lengthy sentence is not necessary to protect the public, promote respect for the law, or deter him from future crimes.

STEPHEN C. NEWMAN
Federal Public Defender
Ohio Bar: 0051928

/s/ Carolyn M. Kucharski

CAROLYN M. KUCHARSKI

Assistant Federal Public Defender

Ohio Bar: 0062119

CHRISTIAN J. GROSTIC

Ohio Bar: 0084734

1660 West Second Street, Suite 750

Cleveland, Ohio 44113

(216) 522-4856 Fax: (216) 522-4421

carolyn_kucharski@fd.org

Attorneys for Anthony Clark